

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE**

JESSE H. NICHOLSON, JR.,	:	
	:	
Petitioner,	:	
	:	
v.	:	Civ. Act. No. 05-732-SLR
	:	
THOMAS L. CARROLL,	:	
Warden, and CARL C. DANBERG,	:	
Attorney General for the State of Delaware,	:	
	:	
Respondents.	:	

MOTION FOR EXTENSION OF TIME

Pursuant to Rule 6 of the Federal Rules of Civil Procedure, respondents move for an extension of time in which to file an answer to the petition. In support thereof, respondents state the following:

1. The petitioner, Jesse H. Nicholson, Jr., has applied for federal habeas relief, challenging the results of his April 2004 prison disciplinary hearing. D.I. 2. By the terms of the Court's order, the answer is due to be filed on March 6, 2006.

2. Within the last two weeks, counsel for respondents has filed two answers to federal habeas petitions and a motion to dismiss a federal habeas petition in this Court. In addition, the undersigned has been, and continues to be, working on other cases before this Court and the state courts. The Appeals Division has also been without a secretary since mid-December, and counsel does not anticipate her return for another month. Moreover, the recent departure of two deputies from the Appeals Division has increased the workload for the few remaining attorneys. In light of the situation, additional time is needed to complete the answer and have it reviewed in the ordinary course of business.

3. Under Habeas Rule 4, the Court has the discretion to give respondents an extension of time exceeding the 40-day limit in Civil Rule 81(a)(2). *Clutchette v. Rushen*, 770 F.2d 1469, 1473-74 & n.4 (9th Cir. 1985); *Kramer v. Jenkins*, 108 F.R.D. 429, 431-32 (N.D. Ill. 1985). The comment to Rule 4 expressly states that the district court has "the discretion to take into account various factors such as the respondent's workload" in determining the period of time that should be allowed to answer the petition.

4. This is respondents' first request for an extension of time in this case.

5. Respondents submit that an extension of time to and including April 21, 2006, in which to file an answer is reasonable. Respondents submit herewith a proposed order.

/s/ Elizabeth R. McFarlan
Deputy Attorney General
Department of Justice
820 N. French Street
Wilmington, DE 19801
(302) 577-8500
Del. Bar. ID No. 3759

DATE: March 1, 2006

CERTIFICATE OF SERVICE

I hereby certify that on March 1, 2006, I electronically filed a motion for extension of time and attachments with the Clerk of Court using CM/ECF. I also hereby certify that on March 1, 2006, I have mailed by United States Postal Service, the same documents to the following non-registered participant:

Jesse H. Nicholson, Jr.
SBI 133626
Delaware Correctional center
1181 Paddock Road
Smyrna, DE 19977

/s/ Elizabeth R. McFarlan
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